
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

PART IV

ENTITLEMENT

CHAPTER II

ENTITLEMENTS AND ACCOUNT HOLDERS

Account holders

27.—(1) As between a controller and his or its account holders, each entitlement held by the controller shall be expressly allocated by the controller as being exercisable for the benefit of the account holder for whom the entitlement is held by noting that the entitlement is held for that account holder in the controller's record of account holders for the security. Notwithstanding that there has been a failure to make such an express allocation, an entitlement held by the controller for an account holder shall remain held for that account holder.

(2) However as against any other person (including the Operator, any other controller and the company issuing the security) all entitlements to units of a security held by a controller shall be treated as being held in a single undivided pool and (save as otherwise provided under these Regulations) no notice is receivable by any such person that a particular entitlement is or was held for a particular person. Accordingly no notice is to be receivable by any other person that a transfer of an entitlement is being or has been effected without the instructions or authority of the account holder with respect to that entitlement.

(3) It is the duty of a controller, in issuing a proper instruction to register with respect to an entitlement, to instruct the registration of the account holder for whom it is held as the holder of the unit of a security concerned.

(4) This regulation is subject to regulation 53(5).

Controller's record of account holders

28.—(1) It is the duty of a controller to establish and maintain at least one record of his or its account holders with respect to a security. A controller may establish more than one record with respect to a security, splitting the entitlements held by him or it in the security between the records.

(2) A controller shall note on a record of account holders maintained by him or it with respect to a security:

(a) the name and address of each of his or its account holders with respect to that security (in the case of persons acting jointly who are together treated as an account holder, the names of each such person together with the address of the first named); and

(b) the number of entitlements to units of the security held by him or it for the account holder.

(3) Where a commercial controller, under paragraph (1), maintains more than one record of account holders for a security, the Operator may treat the entitlements, for the purposes of the system,

as being held by separate controllers; in such a case these Regulations (other than regulation 29) shall apply as if the controller was a separate person acting as a commercial controller with respect to the entitlements so treated as being held by separate controllers.

(4) A record of account holders maintained by a controller shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that entitlements recorded as being held for a person are in fact held for that person.

Insufficiency of entitlements

29.—(1) If at any time:

- (a) a controller holds less entitlements to a particular security than he or it ought to be holding if he or it had properly carried out his or its functions under these Regulations or (in the case of a commercial controller) under any agreement entered into for the purposes of regulation 13(1);
- (b) it is not reasonably practicable to identify and rectify the reason for the deficiency or the deficiency is not otherwise remedied by the controller; and
- (c) it is necessary for any purpose to determine for whom the controller should hold the entitlements to the security,

paragraphs (2) to (4) shall have effect.

(2) If at the time the question falls to be determined the controller concerned holds any relevant entitlements for an account holder, those entitlements shall be held by the controller, to the extent necessary to remedy the shortfall, for the account holders of the controller, other than any person for whom a relevant entitlement is held, with respect to the security concerned. For this purpose a relevant entitlement is an entitlement to the security concerned held by the controller, being a body corporate:

- (a) for:
 - (i) itself or
 - (ii) a member of a group (within the meaning of section 262 of the 1985 Act) of which it is a member where it or such a member is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group; or
- (b) for any other person:
 - (i) acting as a nominee with regard to the unit of a security concerned for the controller or a member of a group (within the meaning of section 262 of the 1985 Act) of which the controller is a member where the controller or such a group member is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group, or
 - (ii) acting as trustee (directly or indirectly) for persons who are all members of such a group;

regulation 28(3) shall not apply.

Where the controller is a partnership, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by the partnership for a partner or for any person who is a person connected with the partner within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the partner), where the partner or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are partners or persons who are all such connected persons with respect to partners or for partners and such persons; regulation 28(3) shall not apply.

Where the controller is an individual, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by him for himself or for any person who is a person connected with him within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the individual), where he or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for the controller or persons who are all such connected persons or for the controller and such persons; regulation 28(3) shall not apply.

(3) Otherwise (if, but only if, there remains at the time the question falls to be determined a shortfall of entitlements after the application of paragraph (2)) the entitlements shall be held for the account holders (other than any person for whom a relevant entitlement was held) in proportion to the entitlements which ought to be held for them by the controller.

(4) This regulation is without prejudice to any liability the controller may have incurred as a consequence of any breach of his or its duties and applies notwithstanding any entries on a controller's record of account holders.

(5) Paragraphs (2) to (4) shall also apply where a controller receives entitlements from another controller as a result of a transfer under regulation 12 and Schedule 1 or regulation 14 and:

(a) that other controller, in relation to the entitlements transferred, held less entitlements to a particular security than he or it ought to have been holding if he or it had properly carried out his or its functions under these Regulations; and

(b) it is not reasonably practicable to identify and rectify the reason for the deficiency;

for the purpose of establishing the persons for whom the entitlements are to be held by the controller.

They shall apply with any necessary modifications and as if the question for whom the entitlements transferred were held had fallen to be determined by the other controller immediately prior to the transfer.